IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4867 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHKUMAR HARGOVANDAS DARJI

Appearance:

1. Special Civil Application No. 4867 of 2002

MR UDAY BHATT AGP for Petitioner No. 1

MR GT PARIKH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/05/2005

C.A.V. JUDGEMENT

The present petition has been filed by the petitioner State under Articles 226 and 227 of the Constitution of India challenging the Judgement and Award

dtd.30/8/2001 passed by the learned Labour Court, Kalol in Reference (LCK) No.601 of 1993, whereby the Labour Court directed the petitioner to reinstate the respondent on his original post with continuity of service and also with 50% back wages and all consequential benefits, within 30 days from the date of publication of the Award in the Government Gazette.

2. Learned AGP Mr.Uday Bhatt has vehemently argued that the petitioner is not an industry under the provisions of the Industrial Disputes Act and the provisions of the Industrial Disputes Act are not applicable; that in view of the decision of the Apex Court in the case of State of Gujarat & others vs. P.N. Parmar reported in JT 2001 (3) SCC 326, it is for the workman to establish before the Court below that the activities of the petitioner department is in nature of industry; that in view of decision of the Division Bench of this Court reported in 2000 Vol.I GLH 482, Irrigation Department of the Government is not an industry; that the respondent was employed on temporary and ad-hoc basis and he was working intermittently as per the requirement of the department; that the respondent was offered work as and when the work is available; that before the Labour Court, the respondent has not contended that the petitioner is an industry and has not placed any material in this regard; that if it is believed that the petitioner is an industry, then also the law of retrenchment is not applicable to the Rojamdar as held by the Hon'ble Supreme Court in the case of Himanshu Vidyarthy reported in AIR 1997 page 3657; that in view of the decision of the Apex Court in AIR 1996, 1965, the court can not issue direction either for reinstatement or re-engagement in the case of Rojamdar workman; such directions can be issued only against regular vacant post; that even if it is held that law of retrenchment is applicable to the petitioner, then also there cannot be any direction for payment of back wages in the matter of Rojamdar; that the Labour court failed to consider the written statement filed by the petitioner before it in its true spirit and failed to appreciate the activities of the petitioner department. Consequently, it is prayed to quash and set aside the impugned award. Learned AGP has placed reliance on the following decisions.

[1] AIR 1996 SC 1565
[2] AIR 1997 SC 3657
[3] (1992) 4 SCC 99
[4] 2004 (3) GLR 1841 (FB)
[5] 2001 (1) GLH 482
[6] 2001 (1) GLH 553.

3. On the other hand, Mr.GT Parikh, learned counsel for the respondent workman has strongly opposed this petition inter-alia contending that the respondent was discharging his duties under the petitioner department as peon; that the work discharged by the respondent was permanent in nature; that in view of the settled law, the petitioner department is an industry and said contention can be raised at any stage and there is no bar; that the respondent has worked from October, 1986 to 1992 under the petitioner more particularly, for 31 days in 1986, 59 days in 1987, 92 days in 1989, 298 days in 1990, 342 days in 1991, and 21 days in 1992, under the petitioner department; thus, in 1990 and 1991, the petitioner has worked for more than 240 days under the petitioner department, however, the service of the respondent has been terminated from 13/2/1992 by oral order, without issuing any notice, without notice pay, without considering seniority and without following mandatory procedure under the Industrial Disputes Act, 1947, illegally and arbitrarily and in violation of the principles of natural justice. Consequently, it is prayed to dismiss the petition.

4. Having heard the learned counsel for the respective parties and considering the material on record and relevant case law, it is clear that the respondent was appointed as Rojamdar on purely temporary and ad-hoc basis. It also appears that the respondent was offered work as and when the work was available and the respondent has worked for 31 days in 1986, 59 days in 1987, 92 days in 1989, 298 days in 1990, 342 days in 1991, and 21 days in 1992, under the petitioner department. It is true that the respondent has worked for more than 240 days in the year 1990 and 1991 under the petitioner, but considering the fact that the respondent was employed as Rojamdar on temporary and ad-hoc basis and he was not appointed in accordance with rules, provisions of sec.25(F) of the Industrial Disputes Act, 1947 is not applicable and the respondent has no right to the post and his disentitlement is not arbitrary, as held by the Hon'ble Supreme Court in the case of Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others, reported in AIR 1997 SC 3657. Further, It is settled law that having made rules of recruitment to various services, under the State or to a class of posts under the State, the State is bound to follow the same and to have selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of

the services. Appointment on daily wage basis is not an appointment to a post according to the Rules, as held by the Hon'ble Supreme Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, reported in AIR 1996 SC 1565. Furthermore, in view of the guidelines issued by the Larger Bench of this Court in the case of Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) GLR 1841, more particularly in para 2.1.13, the respondent has no right to the post.

5. In view of the above facts and circumstances of the case and ratio laid down by the Hon'ble Apex Court in the above judgements, I am of the opinion that the Labour Court failed to consider the relevant facts and law while passing the impugned Award. The impugned Award is, therefore, illegal. The petition is, therefore, required to be allowed and is accordingly allowed. The impugned Award dtd.30/8/2001 passed by the Labour Court, Kalol in Reference (LCK) No.601 of 1993 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(S.D. DAVE,J.)
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